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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/438,104	11/10/99	SAEBO	A CONLINCO-040

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HM12/0322

EXAMINER

JONES, D

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/22/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/438,104

Applicant(s)  
Saebo et al.

Examiner  
Dwayne C. Jones

Group Art Unit  
1614



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 7-24 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 7-24 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 7-24 are pending.
2. Claims 7-24 are rejected.

### ***Information Disclosure Statement***

3. The information disclosure statement filed on November 20, 2000 has been reviewed and considered, see enclosed copy of PTO FORM 1449.

### ***Drawings***

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9, 12, 15, 18, 21 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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7. Claims 9, 12, 15, 18, 21 and 24 recite the limitation "isomerized conjugated linoleic acid" in line 1 of claims 7, 13, 16, 19 and 22. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pariza et al. of U.S. Patent No. 5,017,614. Pariza et al. teach of compositions of conjugated linoleic acid, specifically Pariza et al. teach of that the isomers of octadecadienoic acid, specifically c9,t11 and t10,c12, are found in various food products such as ground beef and cream cheese. Pariza et al. also teach that the remaining isomers of conjugated linoleic acid contributed less than 11% of the

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total conjugated linoleic acid in the samples, (see column 9, lines 9-17). It has been held that changes in size or range are well within the purview of the skilled artisan, see In re Rose, 105 USPQ 237 (CCPA 1955). And so, it would have been obvious to one having ordinary skill in the art at the time the invention was made to simply optimize the ranges disclosed in Pariza et al., especially when the prior art ranges already encompass the instantly claimed range.

11. Claims 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lleven et al. of EP 0779,033 A1. Lleven et al. teach of conjugated linoleic acid residues which more preferably contain at least 75% 9,11 octadecadienoic acid and or 10,12 octadecadienoic acid isomers, (see page 3, lines 28-32). Lleven et al. further disclose that these conjugated linoleic acid compositions are used in food products, (see page 2, lines 3 and 4). It has been held that changes in size or range are well within the purview of the skilled artisan, see In re Rose, 105 USPQ 237 (CCPA 1955). And so, it would have been obvious to one having ordinary skill in the art at the time the invention was made to simply optimize the ranges disclosed in Lleven et al., especially when the prior art ranges already encompass the instantly claimed range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (703) 308-4634. The examiner can normally be reached on Mondays through Fridays from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Mondays.

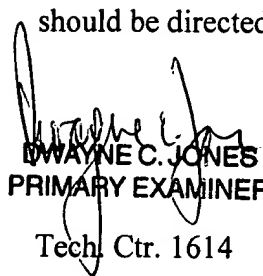
The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



DWAYNE C. JONES  
PRIMARY EXAMINER

Tech. Ctr. 1614

March 21, 2001